

KCC 4973
(K-C 17,890)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Beth A. Lange, et al. Art Unit 1615
Serial No. 10/659,970
Filed September 11, 2003
Confirmation No. 5030
For SINGLE-USE MOISTURIZING PRODUCT

January 3, 2007

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS,

SIR:

RESPONSE TO RESTRICTION REQUIREMENT

This letter is in response to the Office action dated December 6, 2006 in which an election was required between the following groups of claims:

Group I: Claims 1-30, 49 (in part), and 51, directed to single-use lip or body treatment products or dissolvable lip moisturizing products comprising a water-soluble film forming polymeric material, a moisturizing agent, and a solidifying agent (class 424, subclass 401 and class 514, subclass 782);

Group II: Claims 31-48 and 49 (in part), directed to single-use lip treatment products comprising a water-dispersible film forming polymeric material, a moisturizing agent, and a solidifying agent (class 424, subclass 401 and class 514, subclass 772.3); and

Group III: Claim 50 directed to a method for using a single-use lip treatment product comprising wetting the upper and lower lips, introducing the treatment product onto the

wetted lips, and pressing the lips together for a time sufficient to substantially dissolve the lip treatment product (class 424, subclass 401).

Reconsideration of the restriction requirement is respectfully requested. According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[i]f the search and examination of an entire application can be made **without serious burden**, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."¹

In this case, restriction is not proper. The claims of Group I have elements in common with the claims of Group II, i.e., a single-use lip treatment product comprising from about 0.01% (by weight) to about 99.9% (by weight) of a water-soluble film forming polymeric material or a water-dispersible film forming polymeric material, from about 0.01% (by weight) to about 50% (by weight) of a moisturizing agent, and from about 0.1% (by weight) to about 50% (by weight) of a solidifying agent, wherein the single-use lip treatment product is a film and comprises a single layer, and wherein the single-use lip treatment product is sized and configured for application to the lips (see, e.g., claim 1 (Group I) and claim 31 (Group II). Additionally, applicants note that both Group I and Group II encompass claim 49. In particular, claim 49 is directed to a single-use lip treatment product comprising a combination of a water-dispersible film forming polymeric material and a water

¹ MPEP §803 (emphasis added).

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soluble-film forming polymeric material, a moisturizing agent, and a solidifying agent. Any search of the prior art and examination involving Group I claims therefore, will substantially co-extend with the search and examination of Group II claims. Furthermore, both Group I and Group II claims have been classified in class 424, subclass 401 and class 514. Thus, Group I and Group II claims may be searched and examined together without undue burden in accordance with MPEP §803.¹

Subject to the foregoing traverse, the claims of Group I (claims 1-30, 49, and 51) are elected for examination in this application.

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

¹ According to MPEP §806.05(d), restriction is only proper when there would be a serious burden if restriction were not required, as evidenced by separate classification, status, or field of search. In the present case, the claims of Groups I and II have been classified in the same groups and one of the same subgroups. As such, the field of search for the claims of Groups I and II would overlap and would not pose a serious burden on the Office.

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The Commissioner is hereby authorized to charge any government fees which may be required to Deposit Account No. 19-1345.

Respectfully Submitted,

/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
314-231-5400

CMG/LJH/cms
By EFS